



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2005

Chief Don Hatcher  
Leander Police Department  
P. O. Box 319  
Leander, TX 78646-0319

OR2005-03052

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222089.

The Leander Police Department (the "department") received a request for information related to a complaint dated January 21, 2005, and for "any documents or complaints, excluding dog complaints, for the past two years." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common law right to privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

You state that the requestor has asked for “documents relating to the criminal history of [a named individual],” and you therefore contend that the submitted information constitutes a compilation of an individual’s criminal history that is protected by privacy. In this instance, however, the requestor seeks access to unspecified criminal records involving himself. Thus, the compilation of criminal history sought is that pertaining to the requestor. Information may not be withheld from an individual under laws intended to protect that individual’s own privacy. Gov’t Code § 552.023 (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles). Accordingly, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with the common law right of privacy.

You next claim that the submitted information is excepted from disclosure under section 552.101 in conjunction with section 58.007(c) of the Family Code.<sup>1</sup> Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Information relating to juvenile crime victims or witnesses is not made confidential by section 58.007. *See* Open Records Decision No. 628 at 6 (1994) (predecessor statute). CFS number 46167 involves a runaway, which is conduct falling within the scope of section 58.007. *See* Fam. Code § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to

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<sup>1</sup>Section 552.101 also encompasses information protected by other statutes.

return”). Thus, CFS number 46167 is confidential under section 58.007(c) and must be withheld from disclosure under section 552.101 of the Government Code. However, none of the remaining submitted information involves identified juvenile suspects. Therefore, the department cannot withhold the remaining submitted information under section 552.101 on the basis of section 58.007(c).

We next note that CFS number 46275 is subject to section 261.201 of the Family Code. This section provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201. Because CFS number 46275 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, CFS number 46275 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold CFS number 46275 from disclosure under section 552.101 of the Government Code as information made confidential by law.<sup>2</sup> Furthermore, because section 261.201(a) protects all “files, reports, communications, and working papers” related to an investigation of child abuse, the department must not release front page offense report information in cases of alleged child abuse.

We next address your claim that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would

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<sup>2</sup>We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child’s parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue pertains to ongoing criminal investigations. Based upon this representation, we conclude that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including an arrestee’s social security number. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, except as noted below, you must release the types of information that are considered to be front page incident report information from the records at issue, even if this information is not actually located on the front page of an incident report. Although section 552.108(a)(1) authorizes the department to withhold the remaining information that we have marked from disclosure, the department may choose to release all or part of this information that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

Although an arrestee’s social security number is basic information, it must be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, 1) the department must withhold CFS number 46167 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; 2) CFS number 46275 is confidential under section 261.201 of the Family Code and must be withheld in its entirety under section 552.101; 3) with the exception of basic information, the information that we have marked may be withheld under section 552.108(a)(1); and 4) the

arrestee's social security number may be confidential under federal law. As our ruling is dispositive, we do not address your remaining claims.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

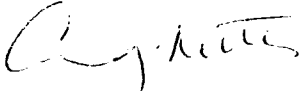
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Nettles", written in a cursive style.

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 222089

Enc. Submitted documents

c: Mr. Curtis Reed  
511 Eaglecreek Drive  
Leander, Texas 78641  
(w/o enclosures)